

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DENNIS CLAYPOOL, individually) Civil No. CV04 00570 ACK KSC
and as Guardian Ad Litem for)

KRISTEN CLAYPOOL, a minor,) DEPOSITION OF
SHERYL CLAYPOOL, SCOTT) DAVID WOOLLEY
CLAYPOOL, and KRISTEN CLAYPOOL) March 29, 2005
1:30 p.m.

Plaintiffs,

vs.

CAPTAIN ANDY'S SAILING, INC.,)
BLUE DOLPHIN CHARTERS, LTD.)
and BLUE DOLPHIN DIVING, INC.,)

Defendants.

MATTHEW ISHAM, individually) Civil No. CV04-00559 ACK KSC
and as Guardian Ad Litem for)
HAYDEN ISHAM, a minor,)
ROXANNE BEST ISHAM,)

Plaintiffs,

vs.

BLUE DOLPHIN CHARTERS, LTD.)
and BLUE DOLPHIN DIVING, LTD.,)
CAPTAIN ANDY'S SAILING, INC.,)

Defendants.

In the Matter of) Civil No. CV05-00017 HG LEK
The Complaint of CAPTAIN)
ANDY'S SAILING, INC., a Hawaii)
corporation, as pro hac vice)
owner, and EVANS PACIFIC, LTD,)
a Hawaii corporation, as owner)
of M/V SPIRIT OF KAUAI, O.N.)
995776, for exoneration from)
or limitation of liability.)

-continued-

EXHIBIT C

1 Do you know?

2 A. Andy.

3 Q. And do you know why Captain Andy's stopped
4 conducting scuba tours?

5 A. No, I don't.

6 Q. Captain Andy's is a corporation?

7 A. Yes, it is.

8 Q. Have you ever held any ownership interest in the
9 company?

10 A. No.

11 Q. Have you ever held any office, other than
12 operations manager, crew member, or skipper?

13 A. No.

14 Q. Never been a member of the board or --

15 A. No.

16 Q. -- director or anything like that?

17 A. No.

18 Q. Now, as I understand it, you were the master of
19 the Spirit of Kauai on July 20, 2004?

20 A. Yes.

21 Q. And were you at the helm at the time of the
22 accident?

23 A. Yes.

24 Q. By "accident," I'm referring to the collision
25 with the Mr. Matt Isham and my client, Dennis Claypool.

1 Is that how you understood it?

2 A. Yes.

3 Q. Were you the man who was in sole charge of the
4 navigation of the Spirit of Kauai at the time of the
5 accident?

6 A. Yes.

7 Q. And were you the person who decided to take the
8 Spirit of Kauai through the area where the accident
9 occurred?

10 A. Yes.

11 Q. Have you had a chance to confer with anybody
12 other than Mike in preparation for your testimony here
13 today?

14 A. No.

15 Q. And have you ever spoken with any lawyers about
16 the accident, other than Mike or the company's lawyers?

17 A. No.

18 Q. Have you reviewed any documents in preparation
19 for your testimony today?

20 A. Just my statement that I gave to the Coast Guard.

21 Q. Let me see if I can find that.

22 MS. BLACK: Are you going to be questioning on
23 the Coast Guard report now?

24 MR. HILLSMAN: I'm going to be questioning on the
25 statement that was given.

1 Q. Why do vessels call at Mokol'e?

2 A. Call at Mokol'e?

3 Q. Why do they anchor there, why do they stop there?

4 A. Snorkeling is limited on the Na Pali coast, and
5 that is one of the few places it is sheltered from the
6 wind, and that actually has a safe anchorage.

7 Q. You were aware long before the accident that the
8 only reason boats tend to anchor at Mokol'e is to put
9 passengers in the water?

10 A. Yes.

11 Q. Now, do any of the Port Allen tour boats operate
12 scuba diving tours?

13 A. Yes.

14 Q. Which ones?

15 A. Blue Dolphin, and I believe, Sea Tours Lucky
16 Lady.

17 Q. When you first saw the Blue Dolphin and the Lucky
18 Lady moored at Mokol'e about five minutes before the
19 accident, did you suspect there were scuba divers aboard
20 those vessels?

21 A. Yes.

22 Q. Did you suspect there were scuba divers in the
23 water?

24 A. Yes.

25 Q. Did that have any effect on the way you navigated

1 through there?

2 A. No, I believed I was far enough away from them
3 where I wouldn't be affected by them.

4 Q. During your many, many, many trips to Mokol'e,
5 have you ever been present while scuba tours were going on?

6 A. Yes.

7 Q. And where did they typically conduct the tours?

8 A. Any time that I was at anchor or at our mooring
9 ball, it was my understanding that the scuba divers were
10 underneath their boat, or in the snorkel area there.

11 Q. At least as you understand it, the tours
12 typically take place either directly under the boat or in
13 shore?

14 A. Or in shore.

15 Q. How deep is the anchorage at Mokol'e?

16 A. 15 feet, maybe.

17 Q. I gather as you go inshore, it gets shallower and
18 shallower?

19 A. Yes.

20 Q. It's your understanding that all the scuba tours
21 at Mokol'e took place in 15 feet of water or less?

22 A. 15 or 20 feet. Yeah, I believe so, if my
23 understanding is correct, beginning divers.

24 Q. How did you arrive at that understanding?

25 A. I have never seen bubbles anywhere else.

1 A. They were spread out a little bit, but there were
2 four.

3 Q. How far from the Blue Dolphin did you see those
4 folks?

5 A. The furthest ones out were 150, 200 yards.

6 Q. From the Blue Dolphin?

7 A. From the Blue Dolphin.

8 Q. Had you ever seen divers in that area before the
9 day of the accident?

10 A. No.

11 Q. Have you ever heard the phrase "dead slow,"
12 referring to a vessel's way?

13 A. Yes.

14 Q. Have you ever heard the phrase "slow, no wake"?

15 A. Yes.

16 Q. Can we agree you were not proceeding at the speed
17 of "slow, no wake" at the moment of the accident?

18 A. I can agree to that.

19 Q. Aboard the Spirit, what is the speed, "slow, no
20 wake"? How many revs is that?

21 A. Maybe a thousand.

22 Q. And as you recall, you were up to 14 or 1500?

23 A. Yes.

24 Q. And moving at 10 knots?

25 A. Yes.

1 Q. But saw no dive flags anywhere?

2 A. No.

3 Q. Let me try to take the negatives out of that.

4 Did you see any dive flags flying anywhere at
5 Mokol'e the day of the accident on any of the vessels that
6 were anchored there?

7 A. No.

8 Q. If you had seen a dive flag flying from the Blue
9 Dolphin, would you have altered your approach to Mokol'e in
10 any fashion?

11 A. No.

12 Q. If you had seen dive floats in the water seaward
13 of the anchorage at Mokol'e, would you have altered your
14 approach in any fashion?

15 A. It depends on how far they were away.

16 Q. Let's try this: If you had seen dive floats
17 floating in the water near the area where you impacted the
18 divers, would you have altered your approach in any
19 fashion?

20 A. I wouldn't have been close enough to have to
21 alter it. I would have already altered my course.

22 Because you can see a dive flag from a long ways
23 away. You would never get that close to them to have to
24 alter -- you would already be heading away from them.

25 Q. If there had been dive floats off Mokol'e in the

1 area of the impact, would you have gone near that area in
2 the Spirit of Kauai?

3 A. No.

4 Q. Have you ever reviewed any of the photographs or
5 CD's or videos that were taken by the various passengers
6 aboard the Spirit or the Blue Dolphin on the day of the
7 accident?

8 A. I might have seen a quick clip the day of the
9 accident.

10 Q. Do you know who took that clip?

11 A. That was some lady from England or something like
12 that.

13 Q. Do you recall who showed you the clip?

14 A. She did.

15 Q. And was she a passenger on your vessel?

16 A. Yes.

17 Q. And what were you and the lady from England
18 looking for in the clip? Do you remember?

19 A. I wasn't looking for anything in the clip. We
20 looked at it. I was totally in shock that day. It was
21 like one of those quick things that happened.

22 MR. HILLSMAN: Let's go off the record for a
23 second. I'll show you a clip, and I'll probably be
24 through.

25 THE DEPONENT: Okay.

1 A. Yes.

2 Q. And you've been aware of that for the last 10 to
3 15 years?

4 A. Yes.

5 Q. Gone up and down the coast a thousand times or
6 more?

7 A. Yes.

8 Q. Now, is it your testimony that when you have gone
9 to Mokol'e in the past, say, before the accident, that you
10 always have a dive flag up? When you put snorkelers in the
11 water, you always have a flag up?

12 A. Yes.

13 Q. As the operations manager, do you require your
14 captains to also put a dive flag up when you have
15 snorkelers in the water?

16 A. Yes.

17 Q. Was that the rule that was in place at the time
18 of the accident?

19 A. Yes.

20 Q. Now, you watched that video that was shown to
21 you. And you said you didn't see any flags.

22 A. I didn't see flags. I wasn't looking for flags.

23 Q. You weren't looking for flags?

24 A. No. I knew there were snorkelers in the water
25 there. And I knew there was a dive operation in progress.

1 And that's why I stayed well outside of the area.

2 Q. So you were aware that there was diving going on?

3 A. Inside the reef area at Mokol'e Reef, inside the
4 dive area.

5 Q. Because of the two boats, Blue Dolphin and Lucky
6 Lady, were in the area, and they were the ones that
7 routinely do diving?

8 A. Yes.

9 Q. In the Mokol'e area?

10 A. Yes.

11 Q. Did you see a flag up on Akialoa?

12 A. I did not. I was not looking for a flag on
13 Akialoa.

14 Q. But one of the requirements that your company has
15 and had at the time of the accident was that your boats are
16 required to have dive flags up when snorkelers are in the
17 water?

18 A. Yes.

19 MR. FORMBY: Let me object. Assumes facts not in
20 evidence. It seems that the Akialoa had snorkelers in the
21 ~~water at the time of the video. We haven't established~~
22 that. No foundation. Calls for speculation.

23 BY MS. BLACK:

24 Q. Do you know whether Akialoa had snorkelers in the
25 water?

CERTIFICATE

STATE OF HAWAII)

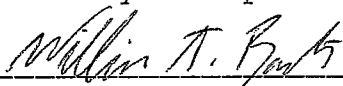
) SS.

COUNTY OF HONOLULU)

I, WILLIAM T. BARTON, RPR, Certified Shorthand Reporter, State of Hawaii, do hereby certify that on March 29, 2005 at 1:30 p.m. there appeared before me DAVID WOOLLEY, the witness whose deposition is contained herein; and that prior to being examined was duly sworn; that I am neither counsel for any of the parties herein, nor interested in any way in the outcome of this action;

That the deposition herein was by me taken down in machine shorthand and thereafter reduced to print via computer-aided transcription under my supervision; that the foregoing represents a complete and accurate transcript of the testimony of said witness to the best of my ability.

Dated this 7th day of April 2005 at Honolulu, Hawaii.


WILLIAM T. BARTON, CSR No. 391

Notary Public, State of Hawaii

My Commission expires August 7, 2005